

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Petition by Verizon New England, Inc. for
Amendment of Cable Division's Form 500
"Cable Operator's Annual Report of Consumer
Complaints"

DTC 08-12

AFFIDAVIT OF WILLIAM HEWIG III

I, William Hewig III, upon oath do depose and state as follows:

1. I am an attorney in good standing, licensed to practice law in the Commonwealth of Massachusetts, and admitted to practice before the courts of the Commonwealth of Massachusetts, the United States Court for the District of Massachusetts, the United States Court of Appeals for the First Circuit, and the United States Superior Court;
2. I am a principal in the firm of Kopelman and Paige, P.C. and I have represented and advised dozens of Massachusetts cities and towns in negotiations for initial or renewal cable television licenses since approximately 1990;
3. The continuing availability of subscribership numbers within the public domain is essential for cable television issuing authorities to monitor the compliance of cable operators with their legal obligations under M.G.L. c.166A, §9, and with parallel provisions found in most currently-effective cable licenses;
4. On a number of occasions within the past ten years, I have been contacted by municipal clients who challenged or questioned the amount of access support payments they received from cable operators pursuant to license-based obligations to pay a percentage of gross annual revenues. This has occurred with at least two different cable operators

within the Commonwealth, and in certain cases involving both carriers we were able to uncover miscalculations and to seek corrective payments;

5. One of the methods I employ to test the adequacy of periodic percentage of gross annual payments is to divide the dollar amount by the number of subscribers to determine whether the average per-subscriber is realistic. This is an important tool for issuing authorities to continue to have at their disposal to monitor cable operator compliance with licenses;
6. Similarly, the continuing availability of subscriber numbers is an essential tool for issuing authorities to monitor cable operator compliance with their annual license for obligations under M.G.L. c.166A, §9. If an issuing authority cannot rely upon the good faith of a cable operator to produce a correct calculation of a percentage of gross annual revenues (as I noted in the previous paragraph to have been the case on a number of occasions), then an issuing authority should not be put into a situation of having to rely upon the good faith of a cable operator to proffer an unverifiable calculation of its c.166A, §9 annual license fee obligations either;
7. The continuing availability of subscribership numbers within the public domain is also an essential tool which issuing authorities need in order to conduct effective license renewal negotiations in the context of a competitive market;
8. In almost all cases of recent experience, cable operators insist upon expressing the quantity of the access support payments, as well as capital payments, to which they will be willing to agree in the form of a percentage of gross annual revenues. This has become particularly more prevalent during the recent era of growing competition, in part

because of billing considerations and in part because it permits forms of payment structuring which cut costs by accessing lower interest rates;

9. When embarking upon renewal license negotiations, issuing authorities are allowed by the federal cable act to deny a license renewal proposal that does not reasonably meet the community's future cable-related needs and interests, taking into account their costs. 47 USC §546(d);
10. The availability of reliable and current subscribership numbers is an essential tool for issuing authorities to determine whether a cable operator's proposal would in fact meet the community's future cable-related needs;
11. An example from recent experience will illustrate why this is the case. One particular community whom I represent, which currently has two competing cable operators, prepared and submitted to its incumbent cable operator a proposed 10-year budget for the provision of cable access programming and services by its recently organized non-profit access corporation. The budget, which had been carefully prepared by a consultant with years of experience in the industry, called for annual operating funding in the amount of \$240,000 for year one, with increases in subsequent years to term based on reasonably foreseeable cost of living increases. The cable operator responded by offering 3% of its gross annual revenues for 10 years. The competing cable operator, which had been licensed for less than a year, had agreed to an escalator clause under which it would match the incumbent's final gross annual revenues percentage. Without knowing the subscribership numbers for both cable operators, it would have been impossible for the issuing authority to test and confirm the gross annual revenue figures provided by the incumbent cable operator for the municipality in question, or to project likely revenue

figures over the anticipated 10-year term of the renewal license for the two cable operators considered together. In the instance in question, the availability of subscribership numbers for both cable operators for current and prior years enabled us to make calculations of reasonable present and future revenues and growth independently of reliance upon gross revenue figures provided by the cable operator, and as a test of those figures. I consider the independent verification ability to be an essential component of any effective license renewal effort.

12. The preservation of subscribership numbers within the public domain in Massachusetts will preserve for issuing authorities an important tool to enable them to make independent calculations of future reasonably anticipated revenues, and to independently test figures provided by the cable operators. The continued ability of issuing authorities to conduct effective license renewal negotiations in a competitive market should, as a matter of important public policy, compel the retention of subscribership numbers within the public domain.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 12TH DAY OF MAY, 2009.

William Hewig III